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In re application of: Russell D. Birkholz : DECISION ON
Serial No. 09/972,124 : PETITION
Filed: October 5, 2001 :
For: WATER CONTACT INDICATOR :

This is a response to the PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT ON FAILURE TO RECEIVE OFFICE ACTION UNDER 37 CFR § 1.181 filed by facsimile transmission on March 14, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment mailed February 3, 2005, be withdrawn since the applicant did not receive the NOTICE OF ALLOWANCE AND FEE(S) DUE mailed September 28, 2004.

DECISION

Since the petitioner asserts that the applicant did not receive the NOTICE OF ALLOWANCE AND FEE(S) DUE mailed September 28, 2004, the request is accepted as a petition under 37 C.F.R. § 1.181 (no fee) and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.02 - NEW PROCEDURE TMOG 1170 O.G. 114).

The evidence presented by the petitioner complies with the requirements set forth in MPEP § 711.03(c). The evidence presented is sufficient to establish that the NOTICE OF ALLOWANCE AND FEE(S) DUE mailed September 28, 2004 was not received at the correspondence address. The evidence provided includes a statement by the petitioner that the NOTICE OF ALLOWANCE AND FEE(S) DUE mailed September 28, 2004 was not received. Also provided is a copy of the application docket records where the NOTICE OF ALLOWANCE AND FEE(S) DUE would have been posted had it been timely received. The instant petition also contains a statement attesting that a search of the file jacket was made, and the results of such a search revealed that the office communication was not received as is required by MPEP § 711.03(c).

Therefore any holding of abandonment for failure to timely file a proper response to the Office letter mailed on September 28, 2004 is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to the technical support staff for mailing of a new Notice of Allowance and Fees Due.

The Petition is **GRANTED**.

JStone

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